

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Brian J. Brown, Michael L. Davis
Application No.:	09/934178
Filed:	August 21, 2001
For:	Improved Longitudinally Flexible Expandable Stent
Examiner:	Paul Prebilic
Group Art Unit:	3774

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Docket No.: S63.2N-5605-US05

REPLY BRIEF

This is a Reply Brief for the above-identified application in response to the Examiner's Answer of June 16, 2010.

A Notice of Appeal was filed in this case on December 9, 2009. An Appeal Brief was filed March 31, 2010. The Commissioner is authorized to charge Deposit Account No. 22-0350 for any other fees which may be due with this Appeal.

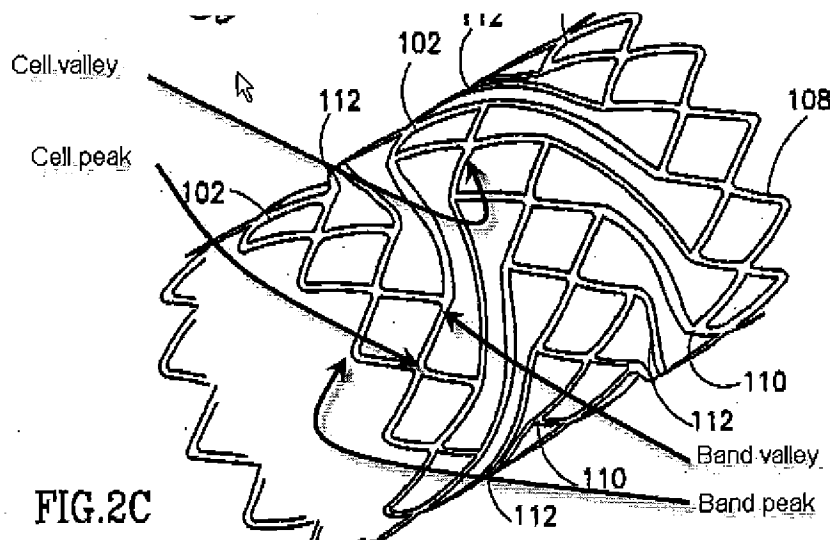
Argument

The Rejections set forth in the Examiner's Answer are deficient, and the cited references fail to anticipate or render obvious, respectively, the rejected claims. Therefore, and in light of the arguments presented in Applicants Appeal Brief and in this Reply Brief, Applicants request that the Board reverse the Examiner's rejections.

Issue 1: Claims 17, 20, 29, and 30 under 35 USC § 102(e) over Pinchasik (US 5,449,373)

In rejecting claims 17, 20, 29, and 30 over Pinchasik, the Examiner fails to consider all of the claim language. Independent claim 17 recites, *inter alia*, "each cell of the stent defined by two of the connecting members and portions of two different serpentine bands, one of the portions being proximal to the other portion, the proximal portion including a plurality of said peaks, the other portion including a plurality of said valleys"

The Examiner's rejection has failed to indicate where in Pinchasik it is believed that Pinchasik discloses stent cells defined (in-part) by portions of two different serpentine bands, one of the portions being proximal to the other portion, "the proximal portion including a plurality of said peaks, the other portion including a plurality of said valleys," as is claimed. (Emphasis added). Turning to the Examiner's annotated version of Pinchasik, shown below, it is unclear how Pinchasik discloses these claimed elements.

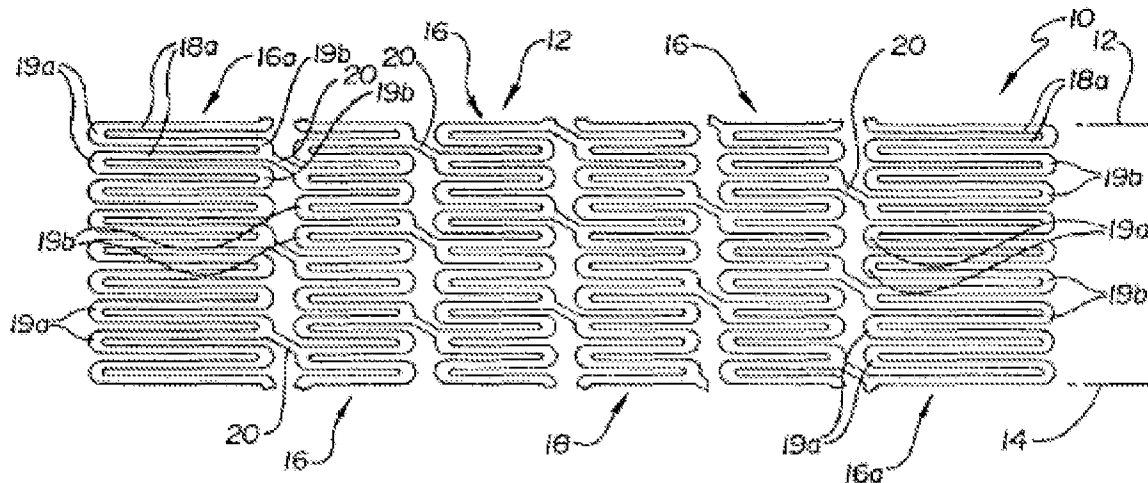


For example, the Examiner's rejection appears to assert that a cell is disposed between a "cell peak" and a "cell valley". See e.g., page 4 of Examiner's Answer. Such cells,

however, do not have a proximal portion including a plurality of said peaks or a portion including a plurality of said valleys. Indeed, Pinchasik states, “the number of links 112 equals the number of cells 108.” Column 3, lines 38-39.

In contrast, as shown below in Fig. 4 of the immediate application and claimed in independent claim 17, each cell is defined by “two of the connecting members and portions of two different serpentine bands, one of the portions being proximal to the other portion, the proximal portion including a plurality of said peaks, the other portion including a plurality of said valleys” In other words, each cell (of claim 17) is defined by more than one peak and more than one valley.

Fig. 4



At least in light of the foregoing, the Examiner’s Rejection has failed to consider each element claimed in independent claim 17 and dependent claims 20, 29, and 30, which depend therefrom. As such, Applicants request that the Board reverse the Examiner’s Rejection.

In addition to the foregoing, on page 11 of the Examiner’s Answer, the Examiner asserts, “the Appellant argues that Pinchasik does not disclose ‘serpentine bands.’” This assertion is erroneous. Applicants stated that it was (and still is) unclear from the Examiner’s rejection what structure of Pinchasik (and Palmaz) the Examiner regards as Applicant’s claimed “serpentine bands.” More particularly, Applicants noted, on pages 14-15 of their Brief, that Pinchasik did not disclose serpentine bands having the characteristics of the claimed serpentine bands. Consequently, the Examiner’s assertion is overly broad and erroneous.

Issue 5: Claims 9, 10, 13-15, 21, 22, and 24 over Israel (US 5,733,303), Pinchasik (US 5,449,373), and Kleshinski (US 5,902,317)

In rejecting claims 9, 10, 13-15, 21, 22, and 24 over Israel, Pinchasik, and Kleshinski, on page 8 of the Examiner's Answer, the Examiner asserts that "it would have been obvious to circumferentially offset the cell ends of Israel for the same reasons that Pinchasik does the same or in order to provide better coverage between stent segments." With regard to the former assertion – that it would have been obvious for the same reasons that Pinchasik does the same – this assertion is absent articulated reasoning. *See e.g.*, MPEP § 2141(III) ("The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious." (citing *KSR International Co. v. Teleflex Inc.* (*KSR*), 550 U.S. 398, 418, 82 USPQ2d 1385, 1396 (2007))). Instead of articulated reasoning, the assertion effectively states that one of ordinary skill would make the modification for whatever reason one of ordinary skill would make such a modification. The assertion is therefore tantamount to saying nothing, and falls short of the articulated reasoning required by the Supreme Court in *KSR*.

With regard to the latter assertion – that it would have been obvious to circumferentially offset the cell ends to provide better coverage between segments – the Examiner provides no factual support. It is unclear whether the purported modification would actually "provide better coverage between segments," as the Examiner suggests. In addition, and as discussed in Applicants' Appeal Brief, Israel specifically discusses the perceived disadvantages of helical connectors and provides a stent design that does not have helical connectors or the perceived disadvantages associated therewith.

Consequently, and for the additional reasons discussed above, the Examiner's rejection is deficient and Applicants request that the Board reverse the Examiner's rejection of claims 9, 10, 13-15, 21, 22, and 24 over Israel, Pinchasik, and Kleshinski.

Issues 2, 3, 4, and 6, respectively:

The Examiner's rejections outlined in issues 2, 3, 4, and 6 are insufficient as outlined in Applicants Appeal Brief of March 31, 2010. For example, as indicated in the Appeal Brief, the Palmaz and Pinchasik references do not disclose a stent wherein "each cell of the stent

[is] defined by two of the connecting members and portions of two different serpentine bands,” as is claimed.

Consequently, Applicants request that the Board reverse the Examiner’s rejections as outlined in Issues 2, 3, 4, and 6, respectively.

Conclusion

Based on at least the foregoing arguments and the Arguments presented in Applicants’ Appeal Brief, Applicants respectfully submit that the rejections presented by the Examiner fail to anticipate or render obvious Applicants’ claims. Accordingly, Applicants respectfully request that the Board reverse the Examiner’s rejections.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

Date: July 27, 2010

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